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1 Q. He being?  
 2 A. Whoever the consultant was. And said, "As of  
 3 tomorrow you are no longer needed here, so pack up and  
 4 get out."  
 5 Q. Ceremoniously, okay. And I assume that's then  
 6 what happened?  
 7 A. Yes.  
 8 Q. And if I understand your testimony earlier,  
 9 you filed a claim for the amounts due under your  
 10 employment agreement, correct?  
 11 A. For the time that I had already worked, yes.  
 12 Q. I'm sorry. From the time you already had  
 13 worked that you hadn't been paid for?  
 14 A. Correct.  
 15 Q. And that was in the AHERF bankruptcy?  
 16 A. Correct.  
 17 Q. And you believe you received a check sometime  
 18 last year as payment for that claim?  
 19 A. Correct.  
 20 Q. Do you recall what the amount of the payment  
 21 was?  
 22 A. 120,000, something in that range.  
 23 Q. Was that the amount that you had claimed as  
 24 well or did you claim something more?  
 25 A. I think that was close to the amount that I

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1 claimed.  
 2 Q. Did you have legal representation?  
 3 A. Yes.  
 4 Q. Who was representing you in that, processing  
 5 that claim?  
 6 A. It was a lawyer in the Mescrov firm in  
 7 Philadelphia. M-E-S-C-R-O-V.  
 8 Q. Do you recall the name of the lawyer?  
 9 A. No.  
 10 Q. Getting back to the board meetings that you  
 11 attended during the time of October of 1996 to September  
 12 of 1998, I think you told me you attended -- you were  
 13 invited to Centennial board meetings?  
 14 A. Correct.  
 15 Q. And to AHERF board of trustee meeting,  
 16 correct?  
 17 A. Correct. I don't know if I was invited to all  
 18 of them, but I was invited to a number of them.  
 19 Q. Do you know if you were invited to all of the  
 20 Centennial board meetings?  
 21 A. I believe I was.  
 22 Q. How often did that board meet during that  
 23 time? Do you recall?  
 24 A. Not very often.  
 25 Q. Two or three times a year?

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1 A. I don't recall.  
 2 Q. Did you more often than not attend those  
 3 Centennial board meetings to which you were invited?  
 4 MS. ZACH: Objection.  
 5 A. If I was invited, I attended.  
 6 BY MS. MEADEN:  
 7 Q. What about the AHERF board meetings, did you  
 8 always attend the meetings to which you were invited?  
 9 A. Yes.  
 10 Q. Was it your understanding you were invited for  
 11 a particular purpose when you were invited to the AHERF  
 12 board of trustee meetings?  
 13 A. It was usually to report on the Graduate  
 14 hospitals.  
 15 Q. All of the Graduate hospitals or only those  
 16 for which you were responsible?  
 17 A. Sometimes all of those, even though I wasn't  
 18 responsible for them.  
 19 Q. Somewhat of a fluid situation then?  
 20 MS. ZACH: Objection.  
 21 A. Yes.  
 22 BY MS. MEADEN:  
 23 Q. If I understand your testimony correctly, your  
 24 responsibilities and the hospitals for which you were  
 25 responsible seem to change during that two-year period

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1 that you were employed by AHERF, correct?  
 2 A. Yes.  
 3 Q. Was it your view that the changes and the  
 4 frequency in the changes in your responsibilities was  
 5 something that was well thought out?  
 6 MS. ZACH: Objection.  
 7 A. I think it probably was.  
 8 BY MS. MEADEN:  
 9 Q. Who was making those decisions, as you  
 10 understood it, as to what your responsibilities would be  
 11 or the hospitals for which you would be responsible for  
 12 over a given period of time?  
 13 A. I think it was coming from Sherif's office.  
 14 Q. Would he be the one who would be conveying the  
 15 information regarding how your responsibilities were  
 16 changing?  
 17 A. No, Dr. Kaye would.  
 18 Q. I want to ask you about a couple of other  
 19 hospitals that you have mentioned earlier. One is  
 20 Rolling Hills. Was that known by any other name?  
 21 A. Elkins, E-L-K-I-N-S, Park.  
 22 Q. And the Warminster Hospital, was that also  
 23 known as the Bucks County Hospital?  
 24 A. Yes.  
 25 Q. Do you recall when or do you have any

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1 knowledge of when the discussions between Graduate  
 2 Health System and AHERF started over a possible  
 3 acquisition?  
 4 A. No, I wouldn't. I think it was sometime near  
 5 the end of '95 or part of '96.  
 6 Q. And if I understand your testimony earlier,  
 7 you were not involved in those discussions with AHERF  
 8 people?  
 9 A. Correct.  
 10 Q. Who from Graduate Health Systems was primarily  
 11 involved in those discussions?  
 12 A. I think mostly the board.  
 13 Q. When you say the --  
 14 A. The Graduate Health System board. Bernie  
 15 Korman for the most part. K-O-R-M-A-N.  
 16 Q. Did you have any understanding as to who he  
 17 was dealing with at AHERF in these discussions?  
 18 A. Yes.  
 19 Q. And who was that?  
 20 A. It was Sherif Abdelhak and David McConnell and  
 21 Nancy Wynstera, W-Y-N-S-T-E-R-A.  
 22 Q. And would Mr. Korman report regularly to the  
 23 Graduate Health System board, to your knowledge, about  
 24 the progress of those discussions?  
 25 A. As far as I recall, I think he did, yes.

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1 Q. And do you recall when -- I assume at some  
 2 point Mr. Korman notified the Graduate Health System  
 3 board that the discussions had progressed to the point  
 4 where there was discussion of a possible acquisition and  
 5 a deal was likely to be done, correct?  
 6 A. Correct.  
 7 Q. Do you recall when Mr. Korman advised the  
 8 board of such event?  
 9 A. No, I don't.  
 10 Q. Do you believe it was several months before  
 11 October 1996?  
 12 A. Yes.  
 13 Q. Did you have any understanding prior to  
 14 October of 1996 why AHERF was interested in Graduate  
 15 hospitals?  
 16 MS. ZACH: Objection.  
 17 A. My understanding was they wanted to build up a  
 18 volume of hospitals and then regions so they can better  
 19 negotiate with the insurance companies there.  
 20 BY MS. MEADEN:  
 21 Q. Did you have any understanding as to why  
 22 Graduate Health Systems would be interested in a  
 23 possible transaction with AHERF at that time?  
 24 MS. ZACH: Objection. Asked and answered.  
 25 A. I think all of us believed that it was in the

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1 best interest of the hospitals and the doctors and  
 2 employees to do it. They thought AHERF would make the  
 3 hospitals more substantial, put capital into the  
 4 hospitals, and they will all be better off than they  
 5 were without AHERF.  
 6 BY MS. MEADEN:  
 7 Q. Did you have any understanding or was any  
 8 information conveyed to you regarding AHERF's purported  
 9 financial condition at that time?  
 10 A. The only thing I recall was, quote, the  
 11 billions of dollars they had available.  
 12 Q. Billions with a B?  
 13 A. Yes. Billions with a B, on their balance  
 14 sheet.  
 15 Q. Did you see or do you know if any of the other  
 16 board members saw financial statements from AHERF prior  
 17 to agreeing to a deal?  
 18 A. Yes.  
 19 Q. Do you recall specifically what financial  
 20 statements from AHERF you would have seen?  
 21 A. No.  
 22 Q. Would it have been audited financial  
 23 statements?  
 24 MS. ZACH: Objection.  
 25 A. I would think that it was.

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1 BY MS. MEADEN:  
 2 Q. Do you believe it was audited financial  
 3 statements for the completed fiscal year immediately  
 4 before the transaction occurred?  
 5 MS. ZACH: Objection.  
 6 A. I don't know, but I would think that it was.  
 7 BY MS. MEADEN:  
 8 Q. Was it your understanding that these billions  
 9 of dollars that were available as reflected on AHERF  
 10 balance sheet was something that the board of Graduate  
 11 Health Systems found very persuasive in deciding to go  
 12 forward with the deal with AHERF?  
 13 A. I think it helped.  
 14 MS. ZACH: Objection.  
 15 BY MS. MEADEN:  
 16 Q. Do you recall whether there were specific  
 17 representations made by AHERF as to the amount of  
 18 capital they were willing to put into the Graduate  
 19 hospitals?  
 20 MS. ZACH: Objection.  
 21 A. I don't recall that.  
 22 BY MS. MEADEN:  
 23 Q. Well, did you have an understanding that AHERF  
 24 was going to make capital improvements to the hospitals?  
 25 A. Yes.

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1 Q. And where is it that you got that  
2 understanding?  
3 A. Just from discussions with principals there.  
4 Q. Principals at AHERF?  
5 A. Yes.  
6 Q. Specifically, do you recall who?  
7 A. Abdelhak, McConnell.  
8 Q. After the acquisition, did you see significant  
9 improvements, capital improvements, in the Graduate  
10 hospitals?  
11 A. Not that I'm aware of.  
12 Q. Did you ever have any understanding as to why  
13 those capital improvements weren't made?  
14 A. I just think it was all a matter of timing.  
15 They did use capital to purchase or entice physicians to  
16 come to Graduate Hospital. So there were dollars spent  
17 from that aspect.  
18 Q. That would have been as far as salaries for  
19 those doctors, correct?  
20 A. No. They enticed a significant orthopedic  
21 practice to come there, and I guess they paid them some  
22 sort of stipend, significant stipend, to attract them  
23 there.  
24 Q. But that would have been money that would have  
25 gone to salaries or stipends as opposed to money that

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1 was put into improving the facilities at the Graduate  
2 hospitals, correct?  
3 MS. ZACH: Objection.  
4 A. That's correct, but the Graduate Hospital got  
5 the benefit of all those patients that came in the  
6 practice.  
7 BY MS. MEADEN:  
8 Q. But you had said earlier that it was at least  
9 your understanding that there would be significant  
10 monies put into capital improvements at the hospitals.  
11 Were you thinking of infrastructure when you made that  
12 statement?  
13 MS. ZACH: Objection.  
14 A. I'm sorry. There were. It was based on the  
15 capital budgets that were produced each year. So if the  
16 hospital produced the capital budget, usually AHERF  
17 followed along and provided those equipment needs at the  
18 hospitals. So there weren't any specific  
19 structural-type, building-type things that were done.  
20 These were mostly equipment.  
21 BY MS. MEADEN:  
22 Q. Well, were the Graduate hospitals in need of  
23 structural or building changes prior to the acquisition?  
24 A. The only one that was really in need, I guess,  
25 would be Rancocas.

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1 VIDEOGRAPHER: We have about three minutes  
2 left on this tape. Going off the video record at 12:07  
3 p.m.  
4 (Discussion off the record)  
5 VIDEOGRAPHER: Back on the video record at  
6 12:09 p.m.  
7 BY MS. MEADEN:  
8 Q. Mr. Mathews, was the level of AHERF investment  
9 in the Graduate hospitals after the acquisition the  
10 level that you had anticipated prior to the acquisition?  
11 A. I think so.  
12 Q. Do you have any knowledge as to what the level  
13 of debt that the Graduate hospitals was in the October  
14 1996 time period?  
15 A. I remember 135,000 for Graduate and Mount  
16 Sinai combined.  
17 Q. 135,000 --  
18 A. Million. Million.  
19 Q. For Graduate and Mount Sinai?  
20 A. And Mount Sinai.  
21 Q. When you say Graduate, you mean the Graduate  
22 Hospital?  
23 A. Right.  
24 Q. What about the other hospitals?  
25 A. I don't recall the debt on those hospitals.

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1 Q. Do you know if it was greater than or lesser  
2 than the 135 --  
3 A. Lesser, I would think.  
4 Q. In total for the other hospitals or each  
5 individual hospital?  
6 A. I don't recall.  
7 Q. And do you have any understanding as to the  
8 total amount of debt that the AHERF system ultimately  
9 ended up assuming as a result of the Graduate Hospital's  
10 acquisition?  
11 A. I don't recall.  
12 Q. Let me ask you this: Do you know if the AHERF  
13 system did in fact assume the debt of the Graduate  
14 hospitals as a result of the AHERF --  
15 A. That was my understanding.  
16 Q. Do you know if they assumed -- they being  
17 AHERF, assumed all of the debt of the Graduate hospitals  
18 as a result of the acquisition?  
19 A. Again, that's what I thought.  
20 Q. Was it your understanding that Graduate Health  
21 System was going to transfer certain funds over a  
22 three-year period of time to the Graduate Hospital as  
23 part of this transaction with AHERF?  
24 A. Yes.  
25 Q. What was your understanding as to the amount

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1 A. No.  
 2 Q. Did you talk to anyone from Miss Zach's law  
 3 firm of Cravath, Swaine & Moore other than someone to  
 4 discuss the scheduling of your deposition? Did you meet  
 5 or talk with anyone from that law firm?  
 6 A. No.  
 7 Q. Did you meet or talk to anyone from  
 8 PricewaterhouseCoopers prior to this deposition?  
 9 A. No.  
 10 Q. Did you review any documents in preparing for  
 11 this deposition?  
 12 A. No.  
 13 Q. And you were shown hundreds of pages of  
 14 documents earlier today, very voluminous exhibits, and  
 15 you were asked specific questions about select portions  
 16 of those documents, correct?  
 17 MS. ZACH: Objection.  
 18 A. Correct.  
 19 BY MS. MEADEN:  
 20 Q. And you certainly didn't have the time or  
 21 probably the wherewithal to read through all of the  
 22 pages that were contained in those exhibits, correct?  
 23 A. Correct.  
 24 Q. So, it is possible that there may be  
 25 information contained within those exhibits that, had

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1 you read it, would have changed some of the answers you  
 2 gave here today, correct?  
 3 MS. ZACH: Objection.  
 4 A. I doubt it.  
 5 BY MS. MEADEN:  
 6 Q. But you certainly didn't read all the pages in  
 7 those documents?  
 8 A. I did not. That's correct.  
 9 Q. Couple more questions. On the Vanguard  
 10 transaction that we had talked about earlier, do you  
 11 have any understanding as to why Vanguard didn't  
 12 ultimately consummate a deal with AHERF?  
 13 A. My only understanding was that financials  
 14 were -- at the time they were looking at completing the  
 15 transaction -- much worse than were projected, and that  
 16 Tenet was willing to step up and pay the dollars or take  
 17 responsibilities that Vanguard wasn't.  
 18 Q. Did you ever have any discussions specifically  
 19 with anyone from Vanguard as to why they weren't going  
 20 to consummate the transaction?  
 21 A. Exactly what I just told you.  
 22 Q. I'm trying to find out from whom did you get  
 23 that understanding.  
 24 A. I think it was Galloway or Hough. Probably  
 25 both of them.

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1 Q. Do you have any involvement with the Graduate  
 2 Health System today?  
 3 A. No. Oh, other than I get a pension from the  
 4 Graduate Health System.  
 5 Q. But you are not a member of the Graduate  
 6 Health System board or anything like that, correct?  
 7 A. Actually, there is no Graduate Health System  
 8 anymore anyway.  
 9 Q. I apologize. You are right. There was a  
 10 successor foundation set up now known as the  
 11 Philadelphia Health Care --  
 12 A. Health Trust.  
 13 Q. Health Trust.  
 14 MS. MEADEN: I don't believe I have any more  
 15 questions, but Miss Zach may.  
 16 REDIRECT EXAMINATION  
 17 BY MS. ZACH:  
 18 Q. You stated a couple times, I believe, that you  
 19 weren't given access to certain documents while you were  
 20 president of Centennial. Do you recall making that  
 21 statement?  
 22 A. Yes.  
 23 Q. Let me first ask you whether you ever  
 24 requested any documents regarding any of the hospitals  
 25 within AHERF system that you were refused?

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1 A. No.  
 2 Q. So, when you say that you weren't given access  
 3 to documents, you were meaning that you were not  
 4 voluntarily being given certain documents relating to  
 5 hospitals that were not within Centennial?  
 6 A. Correct.  
 7 MS. MEADEN: Objection.  
 8 BY MS. ZACH:  
 9 Q. Do you have any reason to believe that you  
 10 would have been refused such documents had you requested  
 11 them?  
 12 A. No.  
 13 Q. You had a brief discussion with Miss Meaden  
 14 regarding possible representations that had been made  
 15 about AHERF during negotiations for the acquisition of  
 16 the Graduate hospitals. Do you recall that discussion?  
 17 A. Yes.  
 18 Q. Is it fair to say that you have no degree of  
 19 certainty regarding what information had passed between  
 20 AHERF and Graduate Health System regarding the  
 21 acquisition of the hospitals?  
 22 A. That's correct.  
 23 Q. And you don't know with any certainty whether  
 24 Graduate Health System had received any audited  
 25 financial statements for AHERF or any of AHERF

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1 hospitals?  
 2 MS. MEADEN: Objection.  
 3 A. I don't know with certainty. I thought we had  
 4 seen audited statements.  
 5 BY MS. ZACH:  
 6 Q. You believe you had seen them?  
 7 A. Yes.  
 8 Q. You also discussed briefly the allocation of  
 9 corporate overhead to the various AHERF hospitals. Do  
 10 you recall that?  
 11 A. Yes.  
 12 Q. And you said that you did have certain issues  
 13 regarding how corporate allocations had been determined  
 14 for the Centennial hospitals for which you were  
 15 responsible?  
 16 A. Well, I don't know if it was just Centennial  
 17 hospitals. I have had issues with that over the years  
 18 working with hospitals with allocations coming down, so  
 19 I just -- they were there. I'm used to just accepting  
 20 corporate allocations. It doesn't do you any good to  
 21 argue about them, so that's the only reason I said that.  
 22 Q. And that was my question. Was there anything  
 23 about corporate allocations under the AHERF system that  
 24 caused you greater concern than you had seen through  
 25 your work with other healthcare systems?

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1 A. No.  
 2 MS. ZACH: I believe that's all I have.  
 3 RE CROSS EXAMINATION  
 4 BY MS. MEADEN:  
 5 Q. I do want to follow up on a couple things.  
 6 You talked about the documents that you hadn't seen,  
 7 hadn't seen all documents I think is what you said. I'm  
 8 a little confused about what you meant by that.  
 9 A. I just said that because through discussions I  
 10 heard about things that happened that were going on, I  
 11 had just never seen any documents to back up what those  
 12 discussions were. Not that I should have seen them. I  
 13 just --  
 14 Q. Were those things that were going on within  
 15 the Centennial hospitals or within the AHERF system as a  
 16 whole or both?  
 17 A. As a whole. Anything involving Centennial I  
 18 usually had access or I got without any trouble.  
 19 Q. Do you believe you had access to -- full  
 20 access to all financial information related to  
 21 Centennial hospitals?  
 22 A. Yes.  
 23 MS. ZACH: Objection.  
 24 BY MS. MEADEN:  
 25 Q. And from whom would you get financial

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1 information for the Centennial hospitals?  
 2 A. Either from the hospitals themselves or from  
 3 McConnell or Morrison.  
 4 Q. Did you deal directly with Mr. McConnell on  
 5 financial information for the Centennial hospitals?  
 6 A. Once in a while. Not routinely.  
 7 Q. Would that be because of the nature of the  
 8 information that you were seeking, you'd go straight to  
 9 McConnell?  
 10 A. If I had a question about the financials that  
 11 the CFO at the hospital couldn't answer, I would go to  
 12 him and find out what the answer was.  
 13 Q. And did you -- were you satisfied with the  
 14 answers that you received from Mr. McConnell in response  
 15 to your questions?  
 16 A. Yes. Yes.  
 17 MS. MEADEN: Nothing further.  
 18 MS. ZACH: Nothing.  
 19 VIDEOGRAPHER: That concludes today's  
 20 deposition. The time on the monitor is 12:51 p.m. We  
 21 are now off the record.  
 22 MS. MEADEN: The court reporter should forward  
 23 the transcript to Mr. Mathews.  
 24 You will get 30 days from the receipt of the  
 25 transcript to fill out an errata sheet, if you find that

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1 something was misstated, and then there will be an  
 2 address to which you can return it.  
 3 THE WITNESS: I can fill names in I remember?  
 4 MS. MEADEN: Sure.  
 5 (Whereupon, at 12:52 p.m., the deposition was  
 6 concluded.)  
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## 1 CERTIFICATE OF OATH

2 THE STATE OF FLORIDA, )

3 COUNTY OF PALM BEACH. )

4  
5  
6 I, Jodi Harmon, Registered Professional  
7 Reporter and Notary Public in and for the State of  
8 Florida at Large, hereby certify that the foregoing  
9 witness personally appeared before me and was first duly  
10 sworn by me.

11 WITNESS MY HAND AND OFFICIAL SEAL, this  
12 3rd day of July, 2003.  
13

14 \_\_\_\_\_  
15 Jodi Harmon, RMR, CRR  
16 Notary Public, State of Florida  
17 Commission Number: CC854931  
18 Expires: July 22, 2003  
19  
20  
21  
22  
23  
24  
25

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## 1 REPORTER'S DEPOSITION CERTIFICATE

2 THE STATE OF FLORIDA, )

3 )  
4 COUNTY OF PALM BEACH. )

5 I, Jodi Harmon, Court Reporter, certify that  
6 the foregoing deposition was taken before me in this  
7 cause at the time and place and in the presence of  
8 counsel as shown herein; that the foregoing pages  
9 contain a true and correct transcription of the  
10 testimony of said witness.

11 I further certify that I am neither attorney  
12 for any party nor am I related to or employed by any  
13 attorney or party connected with the action, nor am I  
14 financially interested in the action.

15 The foregoing certification of this transcript  
16 does not apply to any reproduction of the same by any  
17 means unless under the direct control and/or direction  
18 of the certifying reporter.

19 So certified, this 3rd day of  
20 July, 2003.  
21  
22  
23  
24  
25

26 \_\_\_\_\_  
27 Jodi Harmon, RMR, CRR

**McCool Dep.**

**In The Matter Of:**

***AHERF v.  
PRICEWATERHOUSECOOPERS***

---

***THOMAS MCCOOL***  
***October 28, 2003***

---

***LEGALINK MANHATTAN***  
***420 Lexington Avenue - Suite 2108***  
***New York, NY 10170***  
***PH: 212-557-7400 / FAX: 212-692-9171***

**MCCOOL, THOMAS - Vol. I**





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1 under this agreement.

2 A. Again, if an event of default has occurred and

3 is continuing uncured, the bank may do the four

4 things enumerated here.

5 Q. Can you tell me what --

6 Is Provision 1 under 7.02(a)(1) that

7 the bank can ask the trustee to declare an

8 event of default with respect to the bonds?

9 THE WITNESS: Yes. It says what it

10 says, notify the trustee.

11 BY MR. TERUYA:

12 Q. And would that cause the bonds to be

13 accelerated?

14 A. According to the way 7.02(1) is written, yes.

15 Q. And was another option that was available to

16 PNC for PNC itself to cause the obligated

17 group's obligations to become immediately due

18 and payable?

19 A. One of our options was to notify the trustee of

20 such event of default, yes.

21 Q. What were the remedies that you considered at

22 the time to be available to you in dealing with

23 Allegheny General Hospital obligated group's

24 issues at the time you were dealing with that

25 credit?

MANHATTAN REPORTING CORP., A LEGALINK COMPANY

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1 A. The document speaks for itself. That's our

2 outline.

3 Q. Other than the remedies that are available

4 under 7.02, are there any other remedies that

5 you are aware of that PNC had available to it?

6 A. I'm not sure how you define "remedies," per se.

7 I mean, there's remedies that are enumerated

8 and defined in contract.

9 Is that what you mean?

10 Q. I mean other than remedies that are defined in

11 this contract, was there any other options that

12 PNC considered to be available to it in dealing

13 with any of the problems that you faced at

14 Allegheny General Hospital Obligated Group?

15 A. Options are different than --

16 MR. COGAN: Keep in mind, Item No. 4

17 here is pretty broad.

18 MR. TERUYA: Sure.

19 MR. COGAN: It's exercise, or cause

20 to be exercised, any and all such remedies as

21 it may have under this agreement or any other

22 document or at law or in equity.

23 MR. TERUYA: I'm just trying to see

24 if there's anything else you would have

25 considered at the time in evaluating your

MANHATTAN REPORTING CORP., A LEGALINK COMPANY

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1 options other than what's spelled out in this

2 letter of credit agreement.

3 MS. HACKETT: At the time in

4 evaluating options. What time are you talking

5 about?

6 MR. TERUYA: At the time you were

7 dealing with any problems or issues relating to

8 Allegheny General Hospital Obligated Group.

9 THE WITNESS: I think I understand

10 where you're going with the question, and

11 that's why I wanted to be careful that we're

12 talking about options as opposed to per se

13 remedies.

14 The document outlines in black and

15 white what various words mean and what

16 contractual relationship exists.

17 To the extent, though, that this is a

18 living, breathing company entity on the one

19 hand with management and people involved, and

20 to the extent the bank's comprised of a

21 parallel universe in a sense, there are

22 numerous discussions, assessments, and options

23 explored, so that it's not ultimately reduced

24 to a single determination.

25 It's a pretty broad approach we take

MANHATTAN REPORTING CORP., A LEGALINK COMPANY

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1 in trying to make the assessment of whether or

2 not there are other options available,

3 including time or extensions of time or some

4 ameliorative characteristic that we might want

5 to put in place to both save ourselves the loss

6 and save the company itself.

7 BY MR. TERUYA:

8 Q. Do you recall whether at some point in time you

9 started dealing with issues relating to the AGH

10 Obligated Group?

11 A. Yes.

12 Q. Do you recall approximately when that was?

13 A. Generally in dealing with the problems in the

14 AGH entity, I'd have to say it was probably

15 sometime in July of 1998.

16 Q. How about just in dealing with the AGH

17 Obligated Group in general? Was there some

18 earlier point in time you started dealing with

19 it?

20 A. No.

21 Q. You mentioned --

22 We were talking about DVOG earlier.

23 Could you tell me when you first became

24 involved with issues at DVOG.

25 A. May of 1998.

MANHATTAN REPORTING CORP., A LEGALINK COMPANY

16 (Pages 58 to 61)

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1 Q. What was the event that triggered your  
2 involvement with issues at DVOG in May of '98?  
3 A. There was a meeting in Philadelphia, I don't  
4 recall the exact date, at which the AHERF  
5 management basically made a presentation to the  
6 creditors, including PNC and MBIA, of what the  
7 situation was and what they intended to do.  
8 Q. And what was the situation as reported at that  
9 time by AHERF management?  
10 A. That AHERF management generally had devised a  
11 scenario that they wanted to explain to us that  
12 would involve basically, as I defined it,  
13 basically orphaning the Philadelphia entity,  
14 closing up the gates at Fortress Allegheny, and  
15 leaving us to our fate.  
16 I believe that's exactly how I put it  
17 when I got home.  
18 Q. When you say "orphaning" the Philadelphia  
19 operations, can you explain what you mean by  
20 that.  
21 A. They meant to abandon them.  
22 Q. Into bankruptcy?  
23 A. Into whatever it took. In general terms, I  
24 don't think they devised or determined what  
25 process would be entailed, but the general  
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1 tenor of their approach was to abandon  
2 Philadelphia to its fate, button up the gates  
3 in western Pennsylvania, and hope that nobody  
4 crossed the moat.  
5 Q. So are you saying that the support and credit  
6 from AHERF and its western operations would no  
7 longer be extended to the Philadelphia  
8 operations?  
9 A. That was my understanding from that meeting,  
10 yes.  
11 Q. Do you recall which members of AHERF management  
12 were present?  
13 A. No, I don't. I believe Tony Sanzo and a number  
14 of other people were there, a number of the  
15 trustees were there; but I didn't take  
16 attendance, and I don't recall exactly who was  
17 there.  
18 Q. So when you said AHERF management, you don't  
19 mean simply management in terms of officers,  
20 but you're also including trustees, some  
21 trustees, as well?  
22 A. My recollection is, and I could be wrong  
23 because, as I said, I didn't take attendance at  
24 the meeting, and I didn't keep an attendance  
25 list. I have a general awareness of who was in  
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1 the meeting and where it took place, and it was  
2 actually not a bad lunch.  
3 Beyond that, I don't recall.  
4 Q. Just to clarify that last answer, do you have a  
5 general recollection that some trustees were  
6 present, as well?  
7 A. Again, my memory could well be faulty.  
8 Q. Sure.  
9 A. But as I recall, there may have been a couple  
10 of the trustees there, yes.  
11 Q. Do you recall being told at that time who had  
12 made that decision to, as you put it, abandon  
13 the Philadelphia operations?  
14 A. It was not attributed to any single individual,  
15 no.  
16 Q. Do you know if any discussion was made as to  
17 whether the board of AHERF had considered that  
18 decision?  
19 A. Again, there was no attribution, as I recall,  
20 to who determined that strategy.  
21 Q. Do you recall how long that meeting lasted for,  
22 that presentation?  
23 A. Several hours, because it extended over lunch.  
24 Q. Was there any catalyzing event that triggered  
25 your involvement with issues at the AGH  
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1 Obligated Group in July of '98?  
2 A. The determination basically that a bankruptcy  
3 petition would be filed on behalf of the DVOG  
4 and AHERF as the parent, and that the AGH  
5 entity would not be involved in that.  
6 Q. So were you ever in any position to evaluate --  
7 Actually, let me take one step back.  
8 Did there ever come a time where you  
9 evaluated your options under the AGH Obligated  
10 Group letter of credit agreements in terms --  
11 A. Yes, certainly.  
12 Q. When was that?  
13 A. Likely it would have been in the same time  
14 frame, early July '98.  
15 Q. Was there any failure on the part of the AGH  
16 Obligated Group to comply with any obligations  
17 under the letter of credit agreement?  
18 A. I don't recall whether there was any technical  
19 obligation.  
20 Q. Do you recall what options you considered with  
21 respect to the Allegheny General Hospital  
22 obligated group in terms of this loan  
23 agreement?  
24 A. In general terms, in early July we had  
25 determined that no matter what strategy they  
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<p style="text-align: right;">Page 66</p> <p>1 sought to employ in the DVOG side of the</p> <p>2 company structure, the Allegheny General</p> <p>3 reimbursement agreement was going to be in</p> <p>4 default; and so if the generalized plan that we</p> <p>5 had discussed or had discussed with us by AHERF</p> <p>6 management was that they would seek to most</p> <p>7 quickly abandon the eastern operations and,</p> <p>8 yet, continue to keep the western operations</p> <p>9 viable, it seemed a bit short-sighted to me,</p> <p>10 because under the scenario they outlined, the</p> <p>11 AGH obligations would be in default.</p> <p>12 Q. So what particular options did you consider at</p> <p>13 that point in time that PNC could take in</p> <p>14 responding to what you perceived as a</p> <p>15 forthcoming default by the AGH Obligated Group?</p> <p>16 A. Declaring the default and accelerating the debt</p> <p>17 by causing a draw under the letter of credit.</p> <p>18 Q. Were there any other options that you were</p> <p>19 considering at the time?</p> <p>20 A. There were numerous other options in the global</p> <p>21 sense that we had been discussing not only with</p> <p>22 the DVOG and AHERF, but because they had an</p> <p>23 effect on the AGH operations, those were under</p> <p>24 consideration, yes.</p> <p>25 Q. Could you tell me what those other options</p> <p style="text-align: right;">MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>	<p style="text-align: right;">Page 68</p> <p>1 refused, by the way.</p> <p>2 Q. We'll come back to that term sheet. I just</p> <p>3 wanted to back up one step and ask you, did</p> <p>4 AHERF have any -- the parent corporation --</p> <p>5 have any obligations to PNC at the time you</p> <p>6 were involved with AHERF?</p> <p>7 A. Other than to the extent that they're involved</p> <p>8 as a named party on the letters of credit, no.</p> <p>9 I'm not aware of any.</p> <p>10 Q. You're not aware of any obligations that AHERF</p> <p>11 had in terms of particular responsibilities</p> <p>12 under any agreements to PNC?</p> <p>13 A. Again, it's five years ago. I'm not aware of</p> <p>14 any in particular.</p> <p>15 Q. In addition to the term sheet that you</p> <p>16 mentioned that was one option that was being</p> <p>17 considered in accelerating the AGH Obligated</p> <p>18 Group letter of credit, were there any other</p> <p>19 options that you were considering in mid 1998</p> <p>20 with respect to any AHERF entities?</p> <p>21 A. Again, it was partly based on the constant</p> <p>22 assessment of the circumstances, the liquidity</p> <p>23 need of the organization generally as to what</p> <p>24 could possibly be done.</p> <p>25 There were numerous meetings that</p> <p style="text-align: right;">MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>
<p style="text-align: right;">Page 67</p> <p>1 were.</p> <p>2 A. Yes, given the liquidity position of the DVOG,</p> <p>3 we devised really a term sheet that we had</p> <p>4 offered to AHERF and its management that would</p> <p>5 have basically come up with more liquidity for</p> <p>6 them to meet their obligations in return for</p> <p>7 which they would have agreed to pledge the</p> <p>8 western assets to the generalized corporate</p> <p>9 structure, all the obligations owed to both us</p> <p>10 and MBIA.</p> <p>11 Q. That's with respect to DVOG?</p> <p>12 A. AHERF in a sense, the way we looked at it, was</p> <p>13 more globally from a liquidity standpoint. In</p> <p>14 a day-to-day standpoint, it doesn't matter so</p> <p>15 much who has to make good on the obligation,</p> <p>16 whether it's to a vendor or whether it's</p> <p>17 payroll or whether it's any other liquidity</p> <p>18 need.</p> <p>19 It was a sense that the company, as a</p> <p>20 whole, needed liquidity in some amount; and</p> <p>21 what we devised was a structure that would have</p> <p>22 provided some liquidity to the company, but we</p> <p>23 wanted a quid pro quo.</p> <p>24 We'd put up a liquidity; they had to</p> <p>25 put up the assets, all of the assets. They</p> <p style="text-align: right;">MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>	<p style="text-align: right;">Page 69</p> <p>1 occurred in Philadelphia that discussed</p> <p>2 possible outcomes, and there were lots of</p> <p>3 potential formulations that ultimately got</p> <p>4 reduced to that term sheet.</p> <p>5 Q. In addition to the various options you</p> <p>6 mentioned, can you think of any others you were</p> <p>7 considering at the time?</p> <p>8 A. No. We ran the gamut of what the possible</p> <p>9 outcomes were and our responses to them,</p> <p>10 everything from bankruptcy to simply making</p> <p>11 money available to them under the loosest</p> <p>12 possible circumstances, so --</p> <p>13 Part of the function we serve at the</p> <p>14 bank is to basically try and cover the</p> <p>15 waterfront in a sense of what various options</p> <p>16 were available, not in the formal offered sense</p> <p>17 to the company, but trying to sort of estimate</p> <p>18 or formulate in our own minds what happens if I</p> <p>19 do this, what happens if I don't do this or I</p> <p>20 do something else.</p> <p>21 I mean, that's the everyday activity</p> <p>22 we engage in is constantly making that</p> <p>23 assessment.</p> <p>24 Q. As a result of that process of assessing the</p> <p>25 circumstances, you mentioned two options that</p> <p style="text-align: right;">MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>

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1 were considered at the time; one embodied in  
2 the term sheet that was offered to AHERF, and  
3 another was accelerating the AGH Obligated  
4 Group letter of credit.

5 Were there any other options that  
6 came about as a result of that process that you  
7 discussed that you can recall?

8 A. I don't recall.

9 MS. HACKETT: Can we take a break?

10 MR. TERUYA: Sure. Why don't we take  
11 a quick break.

12 THE VIDEOGRAPHER: We're going off  
13 the record. The time is 10:30.

14 ----

15 (There was a recess in the proceedings.)

16 ----

17 THE VIDEOGRAPHER: We are back on the  
18 record. It is 10:46.

19 BY MR. TERUYA:

20 Q. I think when we left off we were talking about  
21 some of the options that were being considered  
22 prior to the bankruptcy by PNC, and you  
23 mentioned accelerating the AGH Obligated Group  
24 letter of credit and a term sheet that was  
25 offered to AHERF, and I was wondering was any  
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1 security agreement.

2 Q. Is this an agreement between the AGH Obligated  
3 Group and PNC?

4 A. Yes.

5 Q. So it's another letter of credit agreement that  
6 was in place at the time between AGH and PNC?

7 A. Yes.

8 Q. Do you know if this letter of credit agreement  
9 was also irrevocable from PNC's perspective?

10 A. That's my understanding.

11 Q. And if you could just flip to Page 25 of this  
12 agreement, do you see there's a Section 7.01,  
13 default, that runs through to Page 27?

14 A. Yes.

15 Q. And does this section set forth all the  
16 possible events of default under this letter of  
17 credit agreement?

18 A. Yes.

19 Q. Looking at 7.01 B, in particular, is there in  
20 this letter of credit agreement, like in the  
21 last one, a provision that allows AGH Obligated  
22 Group 30 days to try to cure any covenant  
23 noncompliance?

24 A. It looks basically like the same language  
25 that's in the other one, yes.

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1 consideration ever given to accelerating the  
2 DVOG letters of credit?

3 A. I don't recall.

4 Q. Am I correct that these options were being  
5 considered --

6 Actually, let me strike that last  
7 question.

8 Let me show you what's been  
9 previously marked as -- we'll spend less time  
10 on this document -- but what has been  
11 previously marked as Exhibit 326 which, just  
12 for the record, is the letter of credit,  
13 reimbursement and security agreement, dated as  
14 of January 29, 1993, between AGH and Pittsburgh  
15 National Bank.

16 ----

17 (Exhibit No. 326 previously marked for  
18 identification.)

19 ----

20 BY MR. TERUYA:

21 Q. Let me ask you as you flip through it if you  
22 recognize this document.

23 A. Yes.

24 Q. Can you tell me what you recognize it as.

25 A. It's a letter of credit, reimbursement and  
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1 Q. And I think you mentioned that you were aware  
2 of no policy or practice at PNC with respect to  
3 extending the 30-day cure period. Is that  
4 right?

5 A. That's correct.

6 Q. Was that at least an option that PNC have  
7 available to it, to extend the period within  
8 which AGH Obligated Group would try to cure any  
9 covenant noncompliance?

10 A. It certainly was an option, yes.

11 Q. And we earlier were discussing the various  
12 options that you were considering before the  
13 bankruptcy with respect to the AGH Obligated  
14 Group.

15 Were those options ones that you were  
16 considering both under the last letter of  
17 credit agreement, as well as under this letter  
18 of credit agreement?

19 A. Yes.

20 Q. Okay. You can set this document aside.

21 In the '90s, were you involved in any  
22 way with credit analysis of any AHERF entities?

23 A. In the '90s?

24 Q. In the '90s.

25 A. Yes.

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1 Q. Did you participate in any valuation analyses  
2 or oversee any valuation analyses of AHERF's  
3 hospitals?  
4 A. I'm sure I did over time, sure.  
5 Q. Looking at this particular document, do you see  
6 how there's a discussion on the second page of  
7 it for enterprise valuation that shows various  
8 publicly traded acute care entities and how  
9 they're valued in the market?  
10 A. Yes.  
11 Q. Am I correct that essentially this document is  
12 taking the prices of those entities and  
13 dividing by the revenue to come up with an  
14 average value-per-revenue ratio?  
15 A. Yes. It's calculated on those four and then an  
16 average drawn.  
17 Q. And is that a methodology that you employed at  
18 the time to do any valuations of AHERF  
19 entities?  
20 A. Did I employ?  
21 Q. Yeah. Did you employ or oversee the valuations  
22 using that method?  
23 A. No. That wasn't a method I employed, no.  
24 Q. What kind of valuations did you perform or  
25 oversee the performance of?  
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1 A. In large part, I relied on what was being  
2 offered for the enterprises.  
3 Q. By potential buyers?  
4 A. By potential third parties, yeah.  
5 Q. Are you referring to the bids that were made  
6 around the time of the bankruptcy by Vanguard  
7 and Tenet?  
8 A. Yes.  
9 Q. Other than valuations by looking at those  
10 potential bids, did you perform any other types  
11 of valuations or oversee the performance of any  
12 other types of valuations?  
13 A. Of what entity?  
14 Q. Of AHERF hospitals.  
15 A. Of each individually or all of them  
16 collectively or --  
17 Q. Either individually or grouped in any way.  
18 A. We attempted in large part, as this does in its  
19 essence, to try and figure out whether or not  
20 the AGH entity, which we still believed to have  
21 an actual value as opposed to an imaginary  
22 value of the other entities, how that would  
23 impact our carrying value. Those are the  
24 analyses that I was doing.  
25 Q. And what kinds of -- what methodology did you  
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1 use in performing that kind of analysis?  
2 A. In part, it was based --  
3 On the DVOG side, would have been  
4 based on the third-party offers that would have  
5 been made. On the AGH side, it was part and  
6 parcel -- some of this methodology and other  
7 estimates based on cash flow, asset values,  
8 market share.  
9 I mean, there are numerous estimates  
10 one can make as to try and derive what an asset  
11 value might be.  
12 Q. Did you come to any conclusion at the time as  
13 to whether AHERF might be able to satisfy all  
14 of its debt obligations through a sale of all  
15 of its hospitals, both eastern and western?  
16 A. In large part, the term sheet addresses in some  
17 respects that very issue.  
18 The conclusion in formulating that  
19 term sheet was that there was virtually no way  
20 that the combined valuation would ever satisfy  
21 fully all of the obligations, but there was a  
22 way to lessen the amount of loss derived from  
23 the east by doing a loan on a combined basis  
24 and take them to a sale of all of the entities  
25 together.  
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1 Q. And by doing a loan on a combined basis leading  
2 to a sale of all entities together, was that a  
3 way that AHERF could minimize the losses, as  
4 you said?  
5 MR. COGAN: Objection.  
6 THE WITNESS: That was my belief,  
7 yes, that we would be able to minimize our  
8 loss.  
9 BY MR. TERUYA:  
10 Q. In case I misstated it, your view was that a  
11 way to minimize the loss to PNC and other  
12 creditors was for AHERF to utilize its western  
13 region credit, take out a loan for the whole  
14 system essentially, and then to proceed with a  
15 sale of all of its assets, both eastern and  
16 western?  
17 A. Yes.  
18 Q. And did you discuss that opinion with anyone at  
19 PNC?  
20 A. Quite a number of people, yes.  
21 Q. Who would you have had discussions with?  
22 A. Ted Paisley, Dave Cook; numerous other people.  
23 That's how we devised that term sheet.  
24 Q. Did you have any discussions with anyone at  
25 AHERF about that proposal?  
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46 (Pages 178 to 181)

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1 A. Once we gave them the term sheet, yes.  
2 Q. Who did you have interactions with about the  
3 term sheet?  
4 A. Tony Sanzo, numerous other people at the  
5 meetings; but they were all focused primarily  
6 through Tony.  
7 Q. Do you recall ever having any meetings with  
8 AHERF representatives that included board  
9 members relating to the term sheet?  
10 A. Yes. In the days leading up to the actual  
11 bankruptcy filing, the week or so prior to  
12 that, I believe we had a number of meetings  
13 with AHERF management and a number of the  
14 trustees.  
15 Q. Do you remember which trustees came to those  
16 meetings?  
17 A. You know, I just don't remember which names. I  
18 can't remember if Ira Gumberg was there or --  
19 I really just don't remember.  
20 Q. Do you remember any discussions that you had  
21 with any AHERF trustees in particular by name?  
22 A. Again, I just don't recall who from the trustee  
23 side attended the meeting.  
24 Q. Let me step away from that particular meeting  
25 or set of meetings and just ask you generally.  
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1 Do you recall any particular AHERF trustees  
2 that you had interaction with during 1998?  
3 A. I think I just went through that. I can't  
4 recall the names of specific trustees that I  
5 met with on specific days. I just don't  
6 recall. I know they were trustees. I know  
7 they were there. I just don't remember their  
8 names.  
9 Q. In terms of the valuations that you did  
10 perform, do you know who assisted you in  
11 performing those valuations, either at PNC or  
12 advisors to PNC?  
13 A. Ones that I prepared? I prepared them.  
14 Q. Oh, you did them yourself?  
15 A. Sure.  
16 Q. And what kinds of --  
17 What methodology in particular did  
18 you use in valuing the AGH entities?  
19 A. Mostly multiple EBITDA and cash flow.  
20 Q. So some of those same types of methodologies  
21 that are in this document?  
22 A. Sure.  
23 Q. Is this a standard method --  
24 Are these standard methods for  
25 valuing entities?  
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1 A. I believe so, yes.  
2 Q. Do you have any sense as to whether -- or why  
3 in particular David Cook was performing this  
4 valuation that's embodied in this document?  
5 A. I don't know why he would have done this in  
6 this particular way, although I suspect  
7 somebody asked him to.  
8 Q. You can set aside this document.  
9 Let me mark as Exhibit No. 2077 a  
10 two-page document with Bates numbers PNC 12024  
11 through 12025.  
12 It appears to be a letter dated  
13 September 3rd, 1998, from Thomas McCool to  
14 Robert Maloney of Toronto Dominion Securities,  
15 Incorporated.  
16 ----  
17 (Deposition Exhibit No. 2077 marked  
18 for identification.)  
19 ----  
20 (The witness reviewed the document.)  
21 ----  
22 BY MR. TERUYA:  
23 Q. Let me ask you as you look at it if you  
24 recognize this document. Can you tell me what  
25 this document is if you recognize it?  
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1 A. It looks like a letter to Bob Maloney at TD.  
2 Q. Do you recall what the issue was that led to  
3 you sending this letter to Robert Maloney?  
4 A. I believe TD was a participant in the AGH  
5 letters of credit and was questioning, as he  
6 properly thought he should, whether or not  
7 there was a way for them to get out from under  
8 their obligation under their part of the letter  
9 of credit.  
10 Q. I take it this is, in fact, a letter --  
11 Would you recognize your signature on  
12 the second page of this?  
13 A. Oh, that's me.  
14 Q. And do you recall actually sending this letter  
15 to Robert Maloney on or around September 3rd of  
16 '98?  
17 A. It looks like I did.  
18 Q. Do you recall what the resolution was of any  
19 discussion you had with Mr. Maloney about  
20 Toronto Dominion's obligation as a participant  
21 in the letter of credit?  
22 A. When the draw occurred, they funded it.  
23 Q. What questions did Mr. Maloney raise as to  
24 whether Toronto Dominion was obligated as a  
25 participant under the letter of credit?  
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1 category, yeah.

2 Q. It went down?

3 A. It was an attempt to cap the growth in the

4 Medicare piece of the budget.

5 Q. Were you involved in any discussions with AHERF

6 about negotiating a waiver under the -- of

7 certain reported noncompliance under the letter

8 of credit agreements?

9 A. With AGH?

10 Q. With either AGH or with DVOG.

11 A. I remember discussions with AGH about that, but

12 I don't recall with DVOG.

13 Q. Do you know if at or around the bankruptcy

14 David Cook and Frank Taucher were still

15 involved in negotiating with AHERF about

16 various items relating to the letters of

17 credit, including, for example, waivers?

18 A. I don't recall.

19 Q. More generally, do you know if David Cook and

20 Frank Taucher were still in the picture in

21 terms of dealing with AHERF at or around the

22 time of the bankruptcy?

23 A. I don't believe that they were generally, no.

24 They may have been involved to the extent the

25 AGH piece was still there, because I was

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1 focused on the AHERF/DVOG piece.

2 Q. Let me just quickly mark as Exhibit 2078

3 a May 26, 1998, document, a letter from Mike

4 Martin to David Cook with Bates numbers

5 PNC 23702 through 709.

6 - - - -

7 (Deposition Exhibit No. 2078 marked

8 for identification.)

9 - - - -

10 BY MR. TERUYA:

11 Q. I don't think you're a recipient under this

12 document, but all I was curious about is do you

13 see that in this letter in the first sentence

14 there's a reference to it was good seeing you,

15 as well as Tom and Frank, on the 22nd; thanks

16 for coming across the river; and then there's a

17 discussion below about various items of

18 noncompliance at the AHERF entities?

19 A. Yes.

20 Q. Do you see that on the second page, for

21 example, there's a discussion there in a matrix

22 of various items that are being negotiated with

23 with respect to a, among other things, a waiver

24 under the letter of credit agreement?

25 A. Yes.

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1 Q. Is the reference to Tom in the first paragraph

2 a reference to you, if you know?

3 A. I believe it is.

4 Q. Does looking at this refresh your recollection

5 as to whether Frank Taucher and David Cook

6 around this time frame were still involved in

7 negotiating a waiver in conjunction with you?

8 A. It doesn't refresh my recollection, because

9 that's not the question you asked me.

10 The question you asked me was at or

11 around the bankruptcy filing. May 26 is not at

12 or around the bankruptcy filing. May 26 is at

13 least six weeks prior to the bankruptcy filing.

14 And in your view, that may be at or around, but

15 in my view, that's a lifetime away.

16 Q. In May of '98 and June of '98, were Frank

17 Taucher and David Cook still involved in

18 negotiating a waiver with AHERF?

19 A. In May of '98, they clearly were. In early

20 June of '98 they may well have been, because

21 the earlier memo was a response to a meeting

22 that Paula and Jeff Dickson went to, June 4th.

23 Q. Were you involved in these efforts --

24 A. Absolutely.

25 Q. -- to negotiate a waiver?

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1 A. I was involved in these efforts to discover the

2 parts of this that have to do with, for

3 instance, the monthly cash budget for each

4 AHERF entity, the quarterly cash budget for

5 each AHERF entity, projections of LTDC

6 liquidity and DSC ratios through April, May,

7 and June, cash budgets for AHERF and each

8 entity for July and August with and without

9 Vanguard, monthly reports of actual versus

10 budget for all AHERF entities, approval by PNC

11 of use of proceeds from Vanguard, status of all

12 intercompanies between each AHERF entity

13 beginning with 3-98 --

14 Yes; I was involved in all those

15 questions.

16 Q. And who had primary responsibility in May and

17 early June of '98 for negotiating a waiver with

18 AHERF entities?

19 A. I'm sure David and Frank were still intimately

20 involved in that, because to me, that's just a

21 documentation issue at the time.

22 Q. Were they reporting to you at this time?

23 A. No, not formally.

24 Q. Who had the call as to whether to enter into a

25 waiver under any of the letter of credit

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1 agreements with any of the AHERF entities in  
2 May of '98 or early June of '98?

3 A. The bank did.

4 Q. Would it be Frank Taucher and David Cook's side  
5 of the bank or your side?

6 A. The bank had the call, because the bank in the  
7 collective sense makes the call. In a credit  
8 of this size, no individual is going to be  
9 given free rein to say aye or nay.

10 We're talking about a relationship  
11 here that exceeded \$100 million. It would have  
12 involved David; it would have involved Frank;  
13 it would have involved me; it would have  
14 involved Ted Paisley; and I'm sure at some  
15 stage it would have involved Jim Rohr, Helen  
16 Pudlin, and possibly even Tom O'Brien.

17 Q. What position did Helen Pudlin hold at this  
18 time?

19 A. She's a chief counselor.

20 Q. How about Jim Rohr?

21 A. He's the president of the bank.

22 Q. Would the SAC committee have had any  
23 involvement in making a decision to enter into  
24 a waiver?

25 A. No.

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1 Q. How about a senior loan committee?

2 A. No.

3 Q. Just the individuals you mentioned?

4 A. The approval process in a sense, the SAC  
5 committee doesn't have anything to do with  
6 approval of waivers or amendments or anything  
7 else. It's a reporting body that reflects on  
8 the asset value in the sense of the balance  
9 sheet items the bank holds in its loan  
10 portfolio.

11 The approval process for waivers and  
12 amendments is the same as for making a new  
13 loan. In a sense, it's the same general  
14 people, except when it's in workout, and it  
15 comes through a slightly different avenue,  
16 namely, it has to come down my street or  
17 somebody like me.

18 But in this particular circumstance,  
19 given the size of the credit and the nature of  
20 the credit, it would have involved more than  
21 just the normal sort of committee process.

22 Q. I think you said normally a senior loan  
23 committee is involved in making credit  
24 decisions. Is that right?

25 A. Yes.

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1 Q. In this instance with respect to this  
2 particular credit given the size, was there no  
3 senior loan committee involvement?

4 A. I think the same people who would have  
5 generally been involved in discussions would  
6 probably have populated that senior loan  
7 committee, so maybe not formally but informally  
8 they would have been part of the process.

9 Q. Okay. And you said the special asset, or the  
10 SAC committee, reported to -- or was it a  
11 reporting committee?

12 Who did it report to?

13 A. The chairman of the committee, in essence,  
14 would have reported to the chief policy officer  
15 at the bank. That would have been Ted Paisley.

16 Q. And what does SAC stand for?

17 A. Special assets committee.

18 It's like D-Day. D stands for day,  
19 so it's day-day. So in SAC committee, it's the  
20 Special Asset Committee committee.

21 Q. Got it.

22 Did you ever come to know of what  
23 strategies AHERF was pursuing in the months  
24 leading up to the bankruptcy in terms of its  
25 operations of its hospitals?

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1 A. All we saw was the evidence of the outcome of  
2 those strategies.

3 Q. So you had no understanding of whether AHERF  
4 was pursuing a integrated delivery system  
5 strategy?

6 A. I didn't, because I wasn't part of any of the  
7 underwriting.

8 Q. Did you ever come to --

9 Did you ever have any reason to study  
10 what strategies AHERF had followed in the past  
11 before you got involved?

12 A. Based on the evidence in front of me, I didn't  
13 think it was a worthwhile exercise.

14 Q. So you focused on what was the situation as you  
15 encountered it when you first got involved?

16 A. Yes.

17 Q. And I think we've already talked about the  
18 attempted sale of AHERF's hospitals to  
19 Vanguard, as well as sale/lease-back and  
20 accounts receivable, financing transactions.

21 Do you recall at any point in time  
22 coming to learn that AHERF had closed down  
23 Mt. Sinai Hospital and had laid off about  
24 several thousand of its employees in the  
25 Delaware Valley region?

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52 (Pages 202 to 205)

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1 A. No. You mean in terms of day-to-day  
2 operations?  
3 Q. Overseeing its day-to-day operations and what  
4 it was doing?  
5 A. No.  
6 Q. Did anyone at PNC, to your knowledge?  
7 A. Not -- except through the committee, to the  
8 extent the committee was involved, the  
9 unsecured committee.  
10 Q. Do you know if any representatives of the  
11 committee or PNC observed what operations were  
12 going on at AHERF after the bankruptcy?  
13 A. You're going to have to define "operations" for  
14 me.  
15 Q. I just mean like in terms of how the hospitals  
16 were doing and what kinds of management  
17 decisions were being made to preserve value.  
18 A. You mean financial reports or cash flow reports  
19 or --  
20 Q. No, I mean actual operations of the hospitals  
21 like how the sale process was going, how, you  
22 know, the doctor and patient situation that you  
23 described was being handled, how the faculty  
24 situation was being handled, et cetera.  
25 A. Did we oversee it?  
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1 Q. Are you aware of anyone at PNC --  
2 A. Are you talking about overseeing in terms of  
3 managing? That's what an overseer is. What do  
4 you mean?  
5 Q. Did anyone monitor, anyone at PNC or any  
6 members of the creditors' committee, monitor  
7 the operations of the AHERF hospitals?  
8 A. Generally we had regular meetings with our  
9 advisors and accountants, we met with the  
10 company's advisors and accountants, and we met  
11 with the company on a regular basis.  
12 Q. Do you recall ever learning of any problems  
13 that AHERF was facing in terms of attempting to  
14 sell the eastern region hospitals after the  
15 bankruptcy?  
16 A. Yeah, a whole series of them. It's almost  
17 impossible to enumerate all of them.  
18 Q. Do you recall ever hearing that there was any  
19 problem in terms of managing the due diligence  
20 process with respect to the hospitals?  
21 A. That was one of them.  
22 Q. Do you recall ever hearing that --  
23 A. I actually caused a good bit of that, thank  
24 you.  
25 Q. You how was that?  
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1 A. Because I know what a due diligence process is  
2 supposed to entail. In large part, it's an  
3 establishment of a data center and a data room,  
4 whether it's at one of the hospitals or one  
5 room at all of the hospitals. These guys  
6 didn't have anything like that.  
7 Q. AHERF management did not?  
8 A. No.  
9 Q. Who was running the due diligence process at  
10 AHERF?  
11 A. In large part it was Tony and Joe Dionisio, I  
12 think, and they may have designated other  
13 people, but we thought they were generally  
14 responsible for it.  
15 Whether they had the Hunter Group --  
16 I think they confined the Hunter  
17 Group, as I recall, to more or less the  
18 day-to-day hospital operations, and they were  
19 going to take care of the sale themselves; but  
20 I remember specifically asking them to take me  
21 to the data room.  
22 Q. Did you view it as a mistake that prior to that  
23 time AHERF management had not created a data  
24 room where all the documents were kept?  
25 A. It may or may not be characterized as a  
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1 mistake, but I'm unaware of any corporate sale  
2 that has ever taken place without one.  
3 Q. Do you recall having any concerns about any of  
4 management's conduct in running the sale  
5 process and due diligence process with respect  
6 to the eastern regional hospitals after the  
7 bankruptcy other than what you just mentioned?  
8 A. I just thought from the committee's standpoint,  
9 this was not a well-oiled machine --  
10 Q. What do you mean by that?  
11 A. -- in any sense.  
12 They simply didn't approach the tasks  
13 they were charged with as professionally -- or  
14 with professional advice.  
15 Whatever they did, they didn't seem  
16 to do very well.  
17 Q. Did you think there was any problem with the  
18 fact that AHERF had not approached other  
19 potential buyers other than Vanguard and Tenet  
20 prior to the bankruptcy?  
21 MR. COGAN: Objection.  
22 THE WITNESS: I don't know whether  
23 that may or may not have been a root cause of  
24 the basic problem. I don't think limiting it  
25 to two --  
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1 They could have had ten.  
 2 BY MR. TERUYA:  
 3 Q. They just weren't handling the process well?  
 4 A. I didn't think so.  
 5 Q. Did you or any other representatives of MBIA or  
 6 the committee ever take any steps to intervene  
 7 in terms of management's conduct in running the  
 8 sale and due diligence process other than what  
 9 you said about asking that a data room be  
 10 created?  
 11 A. I think we made suggestions and comments, but  
 12 as creditors and ultimately even as members of  
 13 the unsecured creditors' committee, this isn't  
 14 a process where you can simply step in ala the  
 15 European process, damn it, step in and just  
 16 take over and do it yourselves.  
 17 This arrangement and this legal  
 18 system simply doesn't permit that to occur. We  
 19 can have opinions; we can even express those  
 20 opinions, but whether they have effect on the  
 21 parties to whom we're expressing them, though,  
 22 is a different story.  
 23 Here, they apparently had little  
 24 effect.  
 25 Q. If an event of formal default had been declared  
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1 by PNC, could PNC then have forced management  
 2 to make certain decisions with respect to the  
 3 sale process?  
 4 A. To the extent that it would have caused them to  
 5 end up in the bankruptcy sooner, I don't think  
 6 it would have had substantial effect, because  
 7 they still would have been in place. They  
 8 still would have been the same people.  
 9 Q. After PNC declares an event of default in terms  
 10 of the available remedies that PNC has, can PNC  
 11 force management of a borrower to make certain  
 12 decisions at that point?  
 13 A. We can negotiate it for that.  
 14 Q. I'm sorry?  
 15 A. We can negotiate for that outcome; but in terms  
 16 of forcing it as if forcing it will lead to its  
 17 implementation, no, that's not how it works.  
 18 Q. Can PNC ever force management to make certain  
 19 decisions in terms of the rights it has  
 20 available to it under the letters of credit  
 21 agreement?  
 22 A. We have made it a --  
 23 We have done it in the past where we  
 24 requested or required that for, say, new money  
 25 advances that the company would alter  
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1 management, change management, hire a crisis  
 2 manager, take steps like that; and sometimes we  
 3 get what we want, and sometimes we don't.  
 4 Q. It's still a negotiated process even in  
 5 instances like that?  
 6 A. Unfortunately, given the U.S. legal system,  
 7 it's still a negotiated process, yes.  
 8 It's one of the flaws here, that and  
 9 the elimination of debtors' prison, but that's  
 10 just me.  
 11 Q. I'm sorry. That and what?  
 12 A. The elimination of debtors' prisons, but that's  
 13 just me.  
 14 Q. Do you have any understanding of whether there  
 15 was a refinancing of AHERF's -- or AGH's bonds  
 16 at some point in time after the bankruptcy  
 17 filing by AHERF?  
 18 A. No, there was a refinancing of the West Penn  
 19 bonds and then a refinancing -- or reissuance  
 20 of certain of the AGH bonds as part of the West  
 21 Penn transaction.  
 22 Q. So is it your understanding that the AGH bonds  
 23 were defeased using the proceeds of the West  
 24 Penn bond offer?  
 25 A. No.  
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1 Q. That's not your understanding?  
 2 A. No.  
 3 Q. Do you have any understanding of whether AGH  
 4 bondholders have been repaid?  
 5 A. I believe they have.  
 6 Q. Did PNC suffer any losses with respect to the  
 7 AGH Obligated Group letters of credit?  
 8 A. Yes, we did.  
 9 Q. What losses were suffered?  
 10 A. In rough terms, I'm trying to recall, but it  
 11 would have been somewhere on the order of  
 12 \$13 million to \$14 million.  
 13 Q. And what constituted those losses?  
 14 A. The repayment of the bondholders under our  
 15 letter of credit, and the refinance -- the  
 16 purchase combination of West Penn and AGH and  
 17 the amount of money we actually received in  
 18 that transaction.  
 19 Q. So even after the West Penn bond offering, AGH  
 20 Obligated Group still didn't have enough money  
 21 to repay the bondholders. Is that what you're  
 22 saying?  
 23 A. That's right.  
 24 Q. Was the AGH Obligated Group able to repay the  
 25 bondholders to some extent?  
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1 A. The bondholders were paid in full. They had  
2 an LC.  
3 Q. A letter of credit?  
4 A. We, as the letter of credit holder, were not  
5 paid in full, because we paid the bondholders;  
6 but AGH did not pay us the full amount.  
7 Q. Okay. So the total magnitude of the AGH  
8 letters of credit, as we've seen, was far in  
9 excess of \$13 million. Right?  
10 A. Our share of that was roughly \$44 million.  
11 Q. \$44 million. Okay.  
12 A. Yes.  
13 Q. And you, PNC, recovered the amount of the  
14 letters of credit except for \$13 million to  
15 \$14 million. Correct?  
16 A. The way the deal was structured in the West  
17 Penn transaction is we received two-thirds in  
18 cash, and we received one-third in a very soft,  
19 very subordinated note, which we value at zero.  
20 Q. And what is the purpose of that note?  
21 A. Actually, you'd have to ask Morgan. They  
22 wanted it more than I did.  
23 Q. Do you know if that note is supposed to --  
24 Well, let me rephrase that. Who  
25 still owes PNC the \$13 million to \$14 million?  
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1 A. West Penn/Allegheny Health System.  
2 Q. And what are the terms of that -- or what is  
3 the nature of that obligation of West Penn to  
4 PNC?  
5 MS. HACKETT: What do you mean  
6 "nature"?  
7 MR. TERUYA: How is it that West  
8 Penn --  
9 MR. COGAN: A subordinated note.  
10 THE WITNESS: Yes. It's a very  
11 subordinated note.  
12 MR. TERUYA: So West Penn currently  
13 doesn't have enough money to pay PNC. Is  
14 that --  
15 MS. HACKETT: Currently? You mean as  
16 of today?  
17 MR. TERUYA: Well, at the time  
18 whenever this occurred, whenever the bond  
19 offering occurred and PNC ended up being owed  
20 \$13 million to \$14 million. I'm just trying to  
21 understand why is it --  
22 THE WITNESS: I would have to go  
23 through the whole structure of the West  
24 Penn/Allegheny merger, but in summary form,  
25 Highmark advanced \$125 million to West Penn in  
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1 the form of bridge financing to assure the  
2 liquidity of the overall system which is first  
3 as to priority in payment of West  
4 Penn/Allegheny Health System, which is the  
5 combined entity.  
6 The next is the refinanced MBIA  
7 bonds, as well as additional amounts that were  
8 issued in order to make a cash payment to PNC,  
9 Sumitomo, and Morgan, all of whom received  
10 roughly two-thirds of their obligation in cash  
11 and the other one third in junior notes that  
12 are subordinated first to the \$125 million in  
13 Highmark debt and next to the \$300 million or  
14 \$400 million of MBIA, slash, bondholder debt;  
15 and then there's about \$43 million in total of  
16 these what are called -- I forget. I think the  
17 name we came up with actually were FRCs,  
18 floating rate restructuring certificates.  
19 BY MR. TERUYA:  
20 Q. So currently right now the sum of that is that  
21 PNC is owed \$13 million to \$14 million from  
22 West Penn and --  
23 A. West Penn/Allegheny Health System.  
24 Q. And a note has been tendered or provided by  
25 that system to PNC?  
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1 A. Right, with a maturity date of the year 2030.  
2 Q. And that note is for \$13 million to  
3 \$14 million?  
4 A. Face amount.  
5 MR. COGAN: That's what he said three  
6 times, Kevin.  
7 MR. TERUYA: All right. Well, I'm  
8 just trying to make sure I understand it  
9 MR. COGAN: It is pretty clear.  
10 THE WITNESS: I think you're getting  
11 it.  
12 BY MR. TERUYA:  
13 Q. Do you have any understanding of whether the  
14 DVOG bondholders have been repaid in full?  
15 A. They have. From PNC's -- the bondholders that  
16 were backed up by PNC, the letter of credit has  
17 been paid in full.  
18 Q. Okay. Let me just mark as Exhibit 2079 a copy  
19 of a February 11, 2003, transcript from SEC  
20 versus Buettner, et al., litigation; and this  
21 is the 30(b)(6) deposition of Thomas J. McCool.  
22 ----  
23 (Deposition Exhibit No. 2079 marked  
24 for identification.)  
25 ----  
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1 to privilege, the concern we have is we're  
2 trying to understand what personal knowledge he  
3 has and what he might testify about at trial if  
4 he were ever called, and am I understanding you  
5 correctly that by objecting on the grounds of  
6 privilege that you and/or the committee aren't  
7 going to call him as a witness to testify about  
8 the topics that I asked about?

9 MS. HACKETT: No.

10 MR. COGAN: Now that's a silly  
11 question. I mean, you're going to be preparing  
12 witnesses, and are you suggesting that in the  
13 preparation of those witnesses that if I  
14 inquire, force you to invoke the privilege,  
15 then I can then turn around and say, oh, by the  
16 way, all the Coopers & Lybrand witnesses can't  
17 testify?

18 MR. TERUYA: No. I'm asking whether  
19 he has personal knowledge of various topics  
20 just to understand what he might testify about.

21 MS. HACKETT: Let's go off the  
22 record. I want to go off the record.

23 THE VIDEOGRAPHER: We are going off  
24 the record. It is 4:34.

25 -----  
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1 (There was a discussion off the record.)

2 -----  
3 MR. TERUYA: We are back on the  
4 record.

5 THE VIDEOGRAPHER: It is 4:36.

6 MR. TERUYA: I just wanted to state  
7 on the record that at various points in time  
8 you've asserted privilege objections to certain  
9 questions I've asked about what Mr. McCool has  
10 personal knowledge about, and we're trying to  
11 obtain discovery about what he knows, what he  
12 might testify about from his personal  
13 knowledge; and to the extent we've been  
14 precluded from doing that, we reserve our  
15 rights to consider our options and to seek  
16 appropriate relief at an appropriate time from  
17 the Court, if needed.

18 MS. HACKETT: Whatever that may be,  
19 of course.

20 MR. TERUYA: Okay.

21 MS. HACKETT: Okay.

22 MR. TERUYA: And your position is  
23 that he cannot --

24 MS. HACKETT: Please don't do that.  
25 I don't want to be led by you into some

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1 position. I'm not a deponent. My position is  
2 very clear on the record.

3 MR. TERUYA: You stand by your  
4 position that you've already stated?

5 MS. HACKETT: Yes, yes, yes. Okay?  
6 Okay. Thanks.

7 MR. COGAN: Are you done?

8 MR. TERUYA: With that qualifier, I  
9 don't have any further questions on direct.

10 -----

11 EXAMINATION

12 -----

13 MR. COGAN: I just have a couple  
14 questions for you, Mr. McCool.

15 If you would, pull out Exhibit 2079,  
16 which was your deposition before in the matter  
17 of the SEC versus Mr. Buettner, et al.

18 -----

19 (There was a discussion off the record.)

20 -----

21 BY MR. COGAN:

22 Q. I'm sorry, Mr. McCool. I didn't have the  
23 microphone on, so let me ask you, do you have  
24 Exhibit 2079 in front of you?

25 A. I do.

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1 Q. You recognize that, of course, as your  
2 deposition in the matter of the SEC versus  
3 Mr. Buettner, et al. Correct?

4 A. Yes.

5 Q. I would like to just direct your attention to  
6 Page 136, which was a page that Mr. Teruya  
7 directed you to.

8 In particular, I'd like to focus your  
9 attention on Lines 10 through 16 in which you  
10 testified, the lack of accurate and timely  
11 financial information led us to a course of  
12 action in the intervening period that we  
13 arguably wouldn't have taken had we known that  
14 the entities were in the condition that they  
15 actually were in as opposed to what was  
16 represented in the financial statements.

17 See that?

18 A. Yes.

19 Q. And I take it from your earlier responses you  
20 continue to believe that that is true and  
21 accurate testimony?

22 A. Yes.

23 Q. Do you stand by that testimony?

24 A. Yes.

25 Q. And I take it that having accurate and timely

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<p style="text-align: right;">Page 278</p> <p>1 financial statements is important for the bank  2 in its relationships with its creditors. Is  3 that correct?  4 A. Yes.  5 Q. When you have timely and accurate financial  6 information, that allows you to make more  7 informed decisions. Is that right?  8 A. Yes.  9 Q. And when you don't have timely and accurate  10 information, the decisions that you make may  11 not be, as we say, well informed.  12 A. Generally that's true, because they lack the  13 proper and sufficient information.  14 Q. And if you had had --  15 If I understand this testimony, if  16 you had financial information that was more  17 accurate and was more timely, then you would  18 have been in a better position to assess the  19 various options that the bank may have had. Is  20 that right?  21 MR. TERUYA: Objection.  22 THE WITNESS: Generally, yes.  23 MR. COGAN: That's all. Thank you.  24 MR. TERUYA: Let me ask a couple of  25 questions just in follow-up.  MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>	<p style="text-align: right;">Page 280</p> <p>1 ----  2 (The proceedings were concluded at 4:43 p.m.)  3 ----  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25  MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>
<p style="text-align: right;">Page 279</p> <p>1 ----  2 RE-EXAMINATION  3 ----  4 BY MR. TERUYA:  5 Q. Am I correct that you still stand by your view  6 that even if you had had different financial  7 information about the AHERF system, you don't  8 know what steps PNC or yourself would have  9 taken that would have been different?  10 A. No, I don't.  11 Q. And you don't know what the effects would have  12 been of any steps that PNC or you might have  13 taken that would have been different based on  14 receiving different financial information?  15 A. No, because we'd be speculating. As I said  16 here, it's really impossible to predict what  17 the outcome would have been, only that it would  18 have occurred sooner.  19 MR. TERUYA: I don't have any further  20 questions -- subject to the earlier qualifier,  21 I mean.  22 MS. HACKETT: Thank you.  23 THE VIDEOGRAPHER: With there being  24 no further questions, this deposition is  25 concluded.  MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>	<p style="text-align: right;">Page 281</p> <p>1 COMMONWEALTH OF PENNSYLVANIA ) CERTIFICATE  2 COUNTY OF ALLEGHENY ) SS:  3 I, G. Donavich, RPR, CRR, a Court Reporter and  4 Notary Public in and for the Commonwealth of  5 Pennsylvania, do hereby certify that the witness,  6 THOMAS McCOOL, was by me first duly sworn to testify  7 to the truth, the whole truth, and nothing but the  8 truth; that the foregoing deposition was taken at the  9 time and place stated herein; and that the said  10 deposition was recorded stenographically by me and  11 then reduced to printing under my direction, and  12 constitutes a true record of the testimony given by  13 said witness.  14 I further certify that I am not a relative or  15 employee of any of the parties, or a relative or  16 employee of either counsel, and that I am in no way  17 interested directly or indirectly in this action.  18 IN WITNESS WHEREOF, I have hereunto set my hand  19 and affixed my seal of office this 30th day of  20 October, 2003.  21  22 _____  23 Notary Public  24  25  MANHATTAN REPORTING CORP., A LEGALINK COMPANY</p>

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1 COMMONWEALTH OF PENNSYLVANIA ) E R R A T A  
2 COUNTY OF ALLEGHENY ) S H E E T

3 I, THOMAS McCOOL, have read the foregoing pages  
4 of my deposition given on Wednesday, October 28,  
5 2003, and wish to make the following, if any,  
6 amendments, additions, deletions or corrections:  
7 Page/Line Should Read Reason for Change  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18

19 In all other respects, the transcript is true and  
20 correct.

21 \_\_\_\_\_  
22 THOMAS McCOOL  
23 Subscribed and sworn to before me this  
24 \_\_\_\_\_ day of \_\_\_\_\_, 2003.

25 \_\_\_\_\_  
Notary Public  
AKF Reference No. gd77905  
MANHATTAN REPORTING CORP., A LEGALINK COMPANY

**McNair Dep.**

**In The Matter Of:**

***AHERF v.  
PRICewaterhouse COOPERS, LLP***

---

***ROBERT MCNAIR  
January 17, 2003***

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***MANHATTAN REPORTING CORP.  
420 Lexington Avenue - Suite 2108  
New York, NY 10170  
PH: 212-557-7400 / FAX: 212-692-9171***

**MCNAIR, ROBERT (1/17/2003)**

**Word Index included with this condensed transcript**

ROBERT M. MCNAIR, JR.

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1 was dealing on his own with the HSI people. 10:17:57  
 2 Q. Is the technology that you reference, is that 10:18:01  
 3 the 4G technology? 10:18:02  
 4 A. Yes. That's correct. Which had originated 10:18:04  
 5 at Graduate, but which had been sold off to QualMed as 10:18:07  
 6 part of the deal in which Greater Atlantic was sold. 10:18:10  
 7 Q. And under the revised transaction deal 10:18:14  
 8 structure, was, essentially, the Graduate, former 10:18:19  
 9 Graduate hospitals, were they going to merge into SDN? 10:18:25  
 10 A. That's my recollection, yes. 10:18:30  
 11 Q. And then I guess the hospital entity, 10:18:30  
 12 Zurbrugg Memorial Hospital, was going to merge into 10:18:35  
 13 Horizon Medical Corporation? 10:18:38  
 14 A. That's correct. That's correct. 10:18:42  
 15 Q. And was SDN also going to acquire various 10:18:42  
 16 other former Graduate Health System entities? 10:18:43  
 17 A. Yeah. I think it took over most, if not all, 10:18:46  
 18 of those entities that were reflected on that 10:18:47  
 19 organizational chart. I couldn't tell you with 10:18:50  
 20 absolute precision that they were all there, but many 10:18:54  
 21 of them were. 10:18:54  
 22 Q. And were those acquisitions effectuated by a 10:18:54  
 23 merger or were they more like a stock transaction? 10:18:55  
 24 A. No. They kind of came along because we had 10:18:59  
 25 taken over the entities which ultimately -- which 10:19:00

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1 owned the stock. Over time, after the transactions 10:19:04  
 2 were done, we merged many of them out of existence, as 10:19:05  
 3 I recall, and kind of tried to clean up the 10:19:09  
 4 organizational chart, but that was not done at that 10:19:12  
 5 time. 10:19:14  
 6 Q. Did you draft many of the documents in 10:19:15  
 7 Exhibit No. 988? 10:19:18  
 8 A. I did. 10:19:19  
 9 Q. And did you -- to the extent certain 10:19:20  
 10 documents in here were filed with governmental 10:19:24  
 11 agencies, were you in charge of filing them? 10:19:25  
 12 A. I prepared them for filing. They were 10:19:28  
 13 actually filed, as I recall, by our senior paralegal 10:19:29  
 14 from Pittsburgh, Kathleen Saunders, who actually flew 10:19:32  
 15 in to Philadelphia one day and picked up the documents 10:19:36  
 16 and took them to Pittsburgh and filed them. But they 10:19:40  
 17 were prepared for filing by our office, yes. 10:19:40  
 18 Q. I notice on certain documents that there's a 10:19:42  
 19 little footer that says RMM? 10:19:44  
 20 A. That would be me. 10:19:47  
 21 Q. Anywhere we see that footer, does that mean 10:19:50  
 22 that document was at least initially prepared by you? 10:19:52  
 23 A. Probably. If you want to call my attention 10:19:54  
 24 to specific ones. I wouldn't be surprised if somebody 10:19:56  
 25 put my initials on something that I prepared, but 10:19:59

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1 let's hope not. 10:20:01  
 2 Q. I'm talking about little computer-generated 10:20:04  
 3 footers, and let me find an example. 10:20:06  
 4 A. Yeah. You'll see the DVR footers, which 10:20:09  
 5 are -- identified the Delaware Valley region. 10:20:13  
 6 Q. If you turn to Page PH 7386, which is behind 10:20:16  
 7 Tab 5, or really it's right in front of Tab 6. 10:20:21  
 8 A. Okay. Yes. 10:20:26  
 9 Q. Do you see how it says RMM -- 10:20:35  
 10 A. Yes. That's clearly me. That's correct. 10:20:37  
 11 Q. So anywhere we see a footer like that, that 10:20:39  
 12 means that you created that document? 10:20:41  
 13 A. Presumptively, yeah. I mean, if you want to 10:20:42  
 14 ask me about specific ones. I would assume nobody 10:20:46  
 15 else would use that, but as I say, given what I've 10:20:47  
 16 learned since then, I wouldn't put anything past 10:20:51  
 17 anyone. 10:20:58  
 18 Q. And at this time, were you assistant 10:21:00  
 19 secretary of SDN? 10:21:02  
 20 A. Yes, I was. 10:21:05  
 21 Q. Do you recall when you first became assistant 10:21:06  
 22 secretary of SDN? 10:21:08  
 23 A. I can't say that with great certainty. I 10:21:11  
 24 will tell you that SDN was the remnant of United 10:21:14  
 25 hospitals. In fact, it was the old United hospitals 10:21:26

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1 entity, which Mr. Abdelhak had not wanted to bring 10:21:26  
 2 into the Allegheny system, so he had sort of told me 10:21:26  
 3 back in the summer of '91 to, quote, make it go away, 10:21:26  
 4 but not make it go away in the sense of having the 10:21:30  
 5 corporation disappear. He just didn't want -- he 10:21:33  
 6 wanted it to kind of be sitting out there, which it 10:21:34  
 7 did. 10:21:37  
 8 The SDN initials obviously stand for 10:21:37  
 9 Sherif, David and Nancy, who were the three directors. 10:21:41  
 10 I cannot tell you with certainty when I became an 10:21:44  
 11 assistant secretary, but, as best I recall, I was. 10:21:45  
 12 Q. Was it before the GHS acquisition in '96? 10:21:50  
 13 A. To the best of my recollection, yes. 10:21:53  
 14 Q. Was Donald Kaye also one of the directors of 10:21:56  
 15 SDN? 10:21:59  
 16 A. As I recall, yes, he was. 10:22:00  
 17 Q. And just to clarify, on PH 7414 -- 10:22:04  
 18 A. Which tab? 10:22:08  
 19 Q. Which is right in front of Tab 12. 10:22:09  
 20 A. Yes. 10:22:18  
 21 Q. Do you see there's a different kind of footer 10:22:18  
 22 that says RMM:SSA? Do you know what that means? 10:22:20  
 23 A. Yeah. What this means is, this was typed by 10:22:25  
 24 Beth Boyer, who was Mr. Abdelhak's assistant, and it 10:22:28  
 25 would have been something that I gave her to type, 10:22:32